

LIENS AND PRIORITY AND FORECLOSURE OF LIENS

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649632473

Liens and Priority and Foreclosure of Liens by E. A. Stevens

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E. A. STEVENS

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AND FORECLOSURE
OF LIENS**

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BY
E. A. STEVENS
OF the Rockport, Texas, Bar



VON BORGEMANN-JONES CO., PRINTERS
AUSTIN, TEXAS
1922

US
930 75
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PREFACE.

It is not the purpose of this work to trace liens from their origin in other countries, nor to follow their growth and application in other states, but merely to furnish the bar of Texas with a brief summary of the various liens as construed by the courts of Texas.

Since the time when mankind began to establish fixed rules regulating the rights of men, far back in the remote past, the right of compensation for services performed, as well as to secure loans and property sold on credit, has been recognized and enforced. In fact, it has been the main purpose of law in all civilized countries to protect the rights of citizens in their relations with their fellow men.

From time immemorial, or, to use the language of a great law writer, Blackstone, "since the time whereof the memory of man runneth not to the contrary," rules protecting the rights of one who performs a service for another have been the established laws of civilized countries; nay, we may go back far beyond Blackstone's time and find that one greater than all legal commentators declared that "the laborer is worthy of his hire."

Lawmakers have been equally diligent in the protection of those who lend the fruits of their industry and economy to their less fortunate brothers, to enable them to take steps by which they may build up a competency and gather about them the comforts of life, and, with this end in view, liens have been provided by which the lender may secure the return of money advanced to ameliorate the conditions of others, as well as to secure the payment of the value of prop-

erty sold on credit, in order that he who is willing to assist his fellow man may again come into possession of his own, and now he is safeguarded by liens which the courts have been careful to enforce.

So zealously have lawmakers sought to protect citizens in their property rights that courts of equity will imply a lien for the payment of the purchase price of land where, through the ignorance or carelessness of the owner, no lien has been expressly retained, it being a principle of equity that no one shall take the property of another without paying its value to the owner.

In a general sense, a lien upon property may be defined as a right to hold the property of another as security for the payment of a debt. At an early date the privilege of holding the property of a debtor until the debt was satisfied became a legal right, which was strictly enforced by the established courts, thus becoming a part of the common law of England, which, at an early date in the history of Texas, was adopted as the law of procedure in the state, when not in conflict with statutory law.

When relying upon statutory liens, it is advisable that the statutes be observed strictly, notwithstanding the fact that it is sometimes provided that a substantial compliance therewith will be sufficient, for the reason that it is sometimes difficult to determine just how far one may depart from statutory provisions with safety.

It is an established principle of law that, when seeking protection of property rights, diligence will be rewarded, and this principle applies to the creation and enforcement of liens, as well as other legal rights. Often the loss of rights is the penalty inflicted upon the negligent, and this arises out of the theory that

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it would not be just to cause others to suffer because of one's negligence.

In citing authorities the Southwestern Reporter is used exclusively for cases not contained in the Supreme Court Reports, for the reason that many recent cases have not been published in the Court of Civil Appeals Reports, and since the Southwestern Reporter must be used, it was deemed more convenient to confine citations to one set of books.

Where writs of error to Courts of Civil Appeals have been refused by the Supreme Court, that fact is indicated by reference, in parenthesis, to the volumes of the latter court, for example: Jones vs. Smith, 231 S. W. Rep., 183 (108 Texas, 381), indicates that a refusal of a writ of error is reported in that volume of the Texas Reports.

E. A. STEVENS.

Rockport, Texas.

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